

Appendix E to Part 619

AGREEMENT BETWEEN THE MILITARY TRAFFIC MANAGEMENT COMMAND AND SURFACE FREIGHT FORWARDERS GOVERNING THE TRANSPORTATION OF GENERAL COMMODITIES FOR AND ON BEHALF OF THE U.S. DEPARTMENT OF DEFENSE

1. The undersigned, who is duly authorized and empowered to act on behalf of: _____, (Name of Company, Typed or Legibly Printed), hereinafter called the forwarder, as a prerequisite for approval in the transport of general commodities as an exempt surface freight forwarder for the U.S. Department of Defense (DOD), agree to comply with all additional requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the forwarder's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, a surface freight forwarder is defined as a person or company who acts as a common carrier, that is, a carrier which holds itself out to the general public to provide transportation of property for compensation, assembles and consolidates less-than-truckload freight, as defined in the instructions for preparation of Department of Defense Standard Tender of Freight Services, MT Form 364-4 (and revisions thereto), Part II, and uses for the whole or any part of the line-haul transportation the services of regulated or rail carriers, breaks bulk and delivers the less than less-than-truckload freight holding out in its own name and under its own responsibility, a through transportation service from point of receipt to destination. Forwarders may participate in truckload movements and extraordinary circumstances, but not on a regular basis nor as their main business.

2. Approval and Revocation.

a. The forwarder understands that its initial approval and retention of approval are contingent upon establishing and maintaining to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the forwarder's proposed scope of operations in accordance with the service requirements of the shipper.

b. The forwarder understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The forwarder further understands that it is not authorized to participate in any traffic that requires a TPS.

c. In addition to the initial evaluation, the forwarder agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this agreement to confirm continued eligibility.

d. The forwarder certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight board, or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. The forwarder agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The forwarder agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president, vice president's name, operating authority number, corporate office address, telephone number and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct forwarder not to use specific carriers in the movement of DOD freight shipments.

c. The forwarder further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD shipments.

4. **Operations.** The forwarder agrees and certifies that it is acting as a forwarder as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed. Articles of Incorporation, listing all the officers of the corporation are attached and certified to be true, correct and current.

5. Insurance.

a. The forwarder agrees to maintain a minimum of \$1,000,000 public liability insurance and \$250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance form must be on file with MTMC, ATTN: MTOP-QQ, prior to any performance of service by the forwarder.

b. The insurance, carried in the name of the forwarder, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier agrees to ensure that the policies include a provision requiring the

insurer to notify MTMC prior to any performance of service by the carrier. The certificate holder block of the form will indicate that MTMC, ATTN: MTOP, will be notified in writing 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate.

c. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies, self-insurance will not be accepted.

6. Performance Bond.

a. The forwarder agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the carrier obligation to deliver DOD freight to destination. It will cover DOD repurchase costs as a result of carrier default, abandoned shipments, or bankruptcy by the carrier. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The bond must be completed on the form provided by MTMC. The bond will be continuous until canceled. MTMC will be notified in writing 30 days in advance of any change or cancellation. A letter of intent, by the surety company, is required with the initial application package. Upon MTMC approval, the carrier agrees to submit the performance bond before the Tender of Service will be accepted.

7. Safety.

a. The forwarder agrees not to use any carrier that has a "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the GBLs unless consignee or consignor directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. The forwarder agrees not to divulge any information to unauthorized persons concerning the nature of movements of any shipment tendered to it.

d. The forwarder agrees to notify, within a reasonable period of time, the consignor and consignee named by the GBL or CBL of cargo loss, damage, or unusual delay, information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence and other pertinent details. Upon request, the forwarder agrees to ensure MTMC is furnished a copy of accident reports submitted to Department of Transportation on Form MCS 50-T (Property).

e. The forwarder agrees to have in place, a company-wide safety management program. Forwarder safety program shall comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The forwarder further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. Reserved.

9. Equipment.

a. The forwarder agrees to ensure equipment is spotted for loading at the time and place requested. The government reserves the right to reject the utilization of any equipment placed for loading by the forwarder if it does not, upon inspection, meet specifications and requirements for the particular shipment involved (size, cube, cleanliness, mechanical condition, etc.).

10. Shipment. The forwarder agrees to provide, at no additional cost to the government, the status of any shipment within 2-4 hours after an inquiry is made. Further, the forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. The forwarder agrees to accept GBLs on which freight charges will be paid by the Government and bound by all terms stated on the SF-1103, GBL, regardless of the type of bill of lading tendered.

b. The forwarder agrees to comply with the provisions of documentation Prelodging in effect at Military Ocean Terminals which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24-hours in advance of cargo delivery to the terminal.

12. Loss or Damage. The forwarder agrees to be liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. The forwarder agrees to settle promptly, claims for loss or damage. The forwarder also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender of Service.

a. The forwarder agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. The forwarder agrees to provide a street address where the company office is located in lieu of a post office box number. MTMC must be advised of any change in address. Failure to do so is grounds to discontinue use of the carriers.

c. The forwarder understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364-R), or the application MNC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances.

14. Rates.

a. The forwarder agrees to transport Government shipments at its lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the GBL.

b. The forwarder agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with: MTE-IN, Bayonne, New Jersey 07002-5302. The forwarder must publish all rates, charges, and accessorial services on a "*Department of Defense Standard Tender of Freight Services*", MT Form 364-R, and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The forwarder agrees to promptly refund any uncontested overcharges to the Government and authorizes the government to deduct the amount of overcharges from any amount subsequently found to be due the forwarder.

d. The Government reserves the right to pursue administrative claims directly with forwarders under the Interstate Commerce Act or other authorities.

15. Carrier Performance.

a. The forwarder agrees that its performance, and standards of service will conform with its obligations under Federal, State and local law and regulations as well as with the guidelines found in the DTMR and this Agreement. The forwarder fully understands its obligation to remain current in its knowledge of service standards. The forwarder accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the carrier for unsatisfactory service for any operating deficiency, non-compliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar agreements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the Carrier Performance Program are found in MTMC Regulation 15-1, and Army Regulation 55-355, DTMR. If a forwarder is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or nonperformance by the forwarder with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the forwarder for unsatisfactory service until such times as the forwarder establishes to the satisfaction of DOD that the operating or other deficiency(ies) has been corrected.

16. General Provisions. That the forwarder must have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the forwarder. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name. Carrier understands that failure to notify MTMC shall be grounds for immediate revocation of the carrier's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to Commander, Military Traffic Management Command, ATTN: MTOP-QQ, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

20. Carrier Acknowledgement and Acceptance. The certifying carrier official agrees to ensure the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate nonuse of the carrier, the affiliated companies, division and entities.

I, _____, typed name and title of carrier official, verify under penalty of perjury under the laws of the United States of America, that the information contained in the carrier qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense. Further, I understand the requirements of this Agreement and on behalf of: _____, typed name of carrier and MC number, agree to comply with the terms and conditions contained herein.

_____, signature of carrier official and title

Signature of agent official and title: _____

Date: _____

Address: _____

Telephone Number: (_____) _____

24-Hr Emergency Number: (_____) _____

Interstate Operating Authority Certificate Number-MC: _____

Intrastate Operating Authority: _____

Certificate Number(s) Include: _____

Issuing State—For Example: _____

PA—#12345

Military Traffic Management Command Acknowledgment/Acceptance

Signature and Title: _____

Date Approved: _____